

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ROSALINDA SAPLAN, et al.,)	Civ. No. 11-00012 LEK-BMK
)	
Plaintiffs,)	FINDINGS AND
)	RECOMMENDATION TO
vs.)	DISMISS THIS ACTION
)	WITHOUT PREJUDICE
BANK OF AMERICA, et al.,)	
)	
Defendants.)	
_____)	

FINDINGS AND RECOMMENDATION TO
DISMISS THIS ACTION WITHOUT PREJUDICE

On January 5, 2011, Plaintiffs Rosalinda Saplan and Recto Saplan filed this case against Defendants Bank of America, Countrywide Home Loans, Inc., Pride Pacific Mortgage, and Mortgage Electronic Registration Systems. (Doc. 1.) On April 20, 2011, this Court held a Triage Conference, during which Plaintiffs informed the Court that they had not yet served Defendants. At that time, the Court extended the time to serve Defendants until May 31, 2011. The Court also issued an Order to Show Cause, asking Plaintiffs to “show good cause, if any, why sanctions, including dismissal of this case, should not be imposed for failure to serve Defendants.” (Doc. 8.)

At the June 14, 2011 hearing on the Order to Show Cause, Plaintiffs explained that they still had not served Defendants. The Court continued the

hearing to allow Plaintiffs one last extension of time to serve Defendants. On July 7, 2011, this Court held the continued hearing on the Order to Show Cause.

During the hearing, Plaintiffs explained that they were unsuccessful at serving Defendants.

Federal Rules of Civil Procedure (“FRCP”) Rule 4(m) provides:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Plaintiffs filed their Complaint on January 5, 2011. This Court twice extended the time to serve Defendants, but Plaintiffs have failed to properly or effectively serve Defendants to date. It has now been more than 180 days since the Complaint was filed and no Defendants have been served. Plaintiffs have failed to show good cause why service has not occurred or why sanctions, including dismissal of this case, should not be imposed for failure to serve Defendants. Having provided Plaintiffs extended time to serve Defendants, and absent a showing of good cause for their failure to do so, this Court FINDS and RECOMMENDS that this case be dismissed without prejudice pursuant to FRCP Rule 4(m).

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, July 8, 2011.



/S/ Barry M. Kurren
Barry M. Kurren
United States Magistrate Judge